

ORIGINAL



0000175353

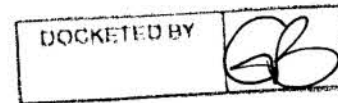
1 Thomas A. Loquvam  
2 Thomas L. Mumaw  
3 Melissa M. Krueger  
4 Amanda Ho  
5 PINNACLE WEST CAPITAL CORPORATION  
6 400 North 5th Street, MS 8695  
7 Phoenix, Arizona 85004  
8 Tel: (602) 250-3630  
9 Fax: (602) 250-3393  
10 E-Mail: [Thomas.Loquvam@pinnaclewest.com](mailto:Thomas.Loquvam@pinnaclewest.com)  
11 [Thomas.Mumaw@pinnaclewest.com](mailto:Thomas.Mumaw@pinnaclewest.com)  
12 [Melissa.Krueger@pinnaclewest.com](mailto:Melissa.Krueger@pinnaclewest.com)  
13 [Amanda.Ho@pinnaclewest.com](mailto:Amanda.Ho@pinnaclewest.com)  
14 Attorneys for Arizona Public Service Company

AZ CORP COMMISSION  
DOCKET CONTROL

2016 DEC -7 P 4: 34

Arizona Corporation Commission  
DOCKETED

DEC 07 2016



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - CHAIRMAN  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE  
COMPANY FOR A HEARING TO  
DETERMINE THE FAIR VALUE OF THE  
UTILITY PROPERTY OF THE COMPANY  
FOR RATEMAKING PURPOSES, TO FIX A  
JUST AND REASONABLE RATE OF  
RETURN THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0036

ARIZONA PUBLIC SERVICE  
COMPANY'S MOTION TO COMPEL

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC SERVICE  
COMPANY.

DOCKET NO. E-01345A-16-0123

1           **I. INTRODUCTION**

2           Pursuant to Ariz. R. Civ. P. 37(a)(2),<sup>1</sup> Arizona Public Service Company ("APS")  
3 respectfully requests that the Presiding Officer enter an order compelling Energy Freedom  
4 Coalition of America, LLC ("EFCA") to respond to APS's Data Requests 1.1 to 1.4(b),  
5 and 1.5 to 1.7 (the "APS Data Requests").

6           APS seeks basic information about EFCA, an intervenor who has alleged that the it  
7 will be substantially and directly affected by the outcome of this proceeding. But in order  
8 to begin understanding whether and how EFCA will be directly and substantially affected,  
9 the motivation or bias of its positions and any grounds for compromise, APS needs to  
10 know who or what EFCA really is.<sup>2</sup> Accordingly, APS has submitted a reasonable set of  
11 data requests seeking information that will answer those questions, including:

- 12           • The nature of EFCA's business;
- 13           • The source of EFCA's funding;
- 14           • Whether EFCA sells any products or services;
- 15           • Whether and how EFCA shares resources with its members;
- 16           • The names of EFCA's executives; and,
- 17           • The number of employees EFCA has, among others.

18           These inquiries are particularly relevant in light of EFCA's insistence that it is a separate  
19 entity from its members, such as SolarCity. Given this insistence, APS has also sought all  
20 communications regarding this rate case between EFCA and SolarCity.

21           In response, however, EFCA has flatly refused to provide any meaningful  
22 information. EFCA's objections range from non-relevance and harassment to claims that  
23 APS's data requests would somehow chill EFCA's First Amendment rights. And with

24           

---

<sup>1</sup> Ariz. Admin. Code R-14-3-101(A) provides that the Rules of Practice and Procedure apply, but  
25 that the Rules of Civil Procedure for the Superior Court of Arizona govern in their absence; R-14-  
26 3-106(K) ("Motions shall conform insofar as practicable with the Rules of Civil Procedure for the  
Superior Court of the State of Arizona.").

27           <sup>2</sup> Knowledge regarding EFCA's relationship with its members, and SolarCity in particular, could  
28 shed light on several issues, including what documents and proof EFCA might possess regarding  
its claims concerning rooftop solar and whether it is not EFCA that should be an intervenor in the  
case, but SolarCity itself.

1 regard to communications between EFCA and SolarCity, EFCA asserted attorney work  
2 product protection, even though that protection only extends to materials created by a  
3 party or their representative at the direction of the parties' attorney.<sup>3</sup>

4 It should be noted that at the same time that EFCA refuses to provide basic  
5 information about itself, it has engaged in a boundless discovery campaign against APS.  
6 EFCA has propounded 19 sets of data requests (totaling 218 data requests) to APS.  
7 Among others, EFCA has sought information regarding individuals' compensation and  
8 daily activities so immaterial to the requested revenue requirement, or any other issue in  
9 this rate case, as to be fairly characterized as "wholly irrelevant." And as the Presiding  
10 Officer is well aware, EFCA has taken the highly unusual step of noticing the deposition  
11 of an APS witness, despite Commission practice to the contrary and before rebuttal  
12 testimony has been filed. This disregard for the intent and purpose of discovery in  
13 Commission proceedings goes beyond just EFCA. EFCA's largest member, SolarCity,  
14 has flatly refused to provide a single document in response to APS's Commission issued  
15 subpoena duces tecum.<sup>4</sup>

16 It is time that EFCA be held accountable for the double standard by which it is  
17 acting in this proceeding. For years, and presumably again in this case, SolarCity  
18 (initially through The Alliance for Solar Choice and now) through EFCA, has made  
19 claims regarding how rooftop solar will be impacted by changes to net metering, rates,  
20 and rate design. Yet SolarCity and EFCA refuse to provide any of their own information  
21 or documents regarding the basis for their claims on these topics. In other words,  
22  
23

24 <sup>3</sup> See Ariz. Rule of Civil Procedure 26(b)(3); see also *State ex rel. Corbin v. Weaver*, 140 Ariz.  
25 123, 129 (Ct. App. 1984) (holding that the work product protects "documents which contain the  
26 mental impressions, conclusions, opinions or legal theories of an attorney or other representative  
of a party concerning the litigation.").

27 <sup>4</sup> See Application for Subpoena Duces Tecum, Nov. 8, 2016, attached as Exhibit 1; see also Lt.  
28 from R. Desai to T. Loquvam re: Objections of SolarCity Corporation to Subpoena Duces Tecum  
(December 5, 2016), attached as Exhibit 2. APS has yet to meet and confer with SolarCity  
regarding this objection letter, but will file a motion in this docket if appropriate after doing so.

1 SolarCity and EFCA want all the benefits of litigating these topics, but are unwilling to  
2 assume any the responsibilities of submitting to discovery that comes with doing so.

3 APS served its First Set of Data Requests on EFCA and subsequently received  
4 EFCA's objections. Following efforts at resolving the disagreement without the Presiding  
5 Officer's intervention, including a meet-and-confer, EFCA provided its Supplemental  
6 Response on November 29, 2016. The Supplemental Responses are the subject of this  
7 Application. The Supplemental Responses contained the same objections and included  
8 only a single addition. Practically, EFCA has not responded to any of the APS Data  
9 Requests, just as EFCA has refused to respond to other parties' requests in this proceeding  
10 and others.

11 As set forth below, APS has asked basic questions related to EFCA's interests in  
12 this rate case. APS is entitled to answers, and EFCA's objections should be rejected.

## 13 **II. ARGUMENT**

### 14 **A. APS is Entitled to Basic Information About EFCA and its** 15 **Members' Interests.**

16 Generally, parties are entitled to basic information about the other parties in a  
17 proceeding. *See, e.g., U.S. v. Abel*, 469, 45, 52 (1984) (noting a party's bias is almost  
18 always relevant). This basic information includes evidence regarding who and what a  
19 party is, and why it is involved in the proceeding.

20 EFCA's Application to Intervene made a number of assertions about who EFCA is  
21 and what its interests are. For example, EFCA prefaced its Application to Intervene by  
22 explaining, "EFCA **promotes its members' interests** in providing these products by  
23 participating in a variety of fora, including in public utility commission proceedings  
24 across the nation and in the courts[.]" Application to Intervene at 1:26-27, 2:1 (emphasis  
25 added). Further, the Application to Intervene centered on two arguments<sup>5</sup>: (1) "EFCA is  
26 directly and substantially affected [by the proposals in the Matter]," and (2) "EFCA's

27 <sup>5</sup> EFCA also claimed "EFCA's Intervention Will Not Broaden These Proceedings." Application  
28 to Intervene at 2:20.

1 interests are unique and no other party can adequately represent EFCA's interests."  
2 Application to Intervene at 2:3, 23-24.

3 The APS Data Requests seek evidence directly related to the assertions that EFCA  
4 made in its Application to Intervene. For example, APS Data Request 1.1(a) asks EFCA  
5 to "[d]escribe EFCA's business, including its purpose, its source of funding, and what  
6 EFCA does or seeks to accomplish in relation to the interests of its members and  
7 managers." Because EFCA cited its "unique" interests and its intent to "promote its  
8 members' interests" in this rate case, APS is entitled to answers explaining what the  
9 interests are.

10 As seen below, none of the Data Requests are remotely invasive. Rather, the  
11 inquiries are designed to answer basic background questions about EFCA and its members  
12 and their interests in this proceeding.

13 **B. EFCA Needs to Abide by the Commission Procedures EFCA**  
14 **Helped Establish.**

15 In its Application to Intervene, EFCA noted that it has previously intervened in a  
16 number of rate cases before this Commission. Application to Intervene at 2:1-2 ("[In]  
17 keeping with its mission, [EFCA] has intervened in several dockets at the Commission to  
18 date."). EFCA's past conduct, as well the Commission's previous orders, should guide  
19 the Presiding Officer's decision.

20 EFCA has already been subject to a Commission order rejecting similar arguments  
21 to those raised in its objections here. In a related proceeding, EFCA objected to Data  
22 Requests for information about its members and their interests. *Procedural Order*  
23 *Clarifying Previous Procedural Order and Extending the Time Clock*, In re *Application of*  
24 *Sulphur Springs Valley Electric Cooperative, Inc.*, Docket No. E-01575A-15-0312  
25 (hereinafter, "*Sulphur Springs*"). There, the Commission recognized that EFCA's  
26 objections did not excuse its failure to respond to the Data Requests. The Commission,  
27 after referencing EFCA's acknowledgment of the point during oral argument, explained  
28 that "the Commission has broad discretion when directing discovery and has the authority



1 to order disclosure that might be otherwise impermissible in the traditional courts.”  
2 *Sulphur Springs* at 3:2-7 (citing A.A.C. R14-3-109(K) and (O) to suggest that the  
3 technical rules of evidence do not directly apply and that the “Commission has the  
4 authority to issue subpoenas” if EFCA did not direct its members to provide the  
5 information sought). The Presiding Officer should reach the same conclusion here and  
6 require EFCA to respond to the APS Data Requests.

7 While *Sulphur Springs* serves as previous Commission guidance, EFCA’s own  
8 conduct also suggests its objections must be denied. For example, EFCA has sought to  
9 know the source and amount of Arizona Investment Council’s (“AIC”) funding. See APS  
10 Response to EFCA Data Request 4.4, attached as Exhibit 3. The request was quite similar  
11 to APS Data Request 1.1 referenced above. When asked, AIC promptly responded,  
12 providing EFCA with financial information like that requested by APS here. *Id.* Given  
13 that EFCA expects other groups to respond to Data Requests about funding, it should not  
14 be allowed to object when faced with the same.

### 15 C. EFCA’s Specific Objections Have No Merit.

16 In addition to the principles explained above, which justify an order to compel a  
17 response, APS also addresses EFCA’s specific objections below. Some of EFCA’s  
18 objections were frequently repeated, and this application uses footnotes to indicate when  
19 an EFCA objection and APS response are repeated.

- 20  
21 i. APS 1.1(a): “Describe EFCA’s business, including its  
22 purpose, its source of funding, and what EFCA does or seeks  
23 to accomplish in relation to the interests of its members and  
24 managers.”

25 EFCA objected on two grounds: (1) that the “request is not reasonably calculated  
26 to lead to the discovery of admissible evidence;” and (2) the disclosure would violate  
27 EFCA’s First Amendment rights, citing *NAACP v. Alabama*, 357 U.S. 449 (1958).

28 First, this is a basic, simple data request. APS is pursuing straightforward  
information related to EFCA’s interests and involvement in this proceeding. It is

1 unfathomable that EFCA can claim that “no other party can adequately represent EFCA’s  
2 interests,” and then refuse to disclose what its business or interests are. Application to  
3 Intervene, 2:23-24.

4 As discussed above, EFCA is well aware that proceedings before the Commission  
5 do not necessarily need to follow the same rules of evidence as a typical proceeding. The  
6 *Sulphur Springs* Procedural Order clarified that disclosure before the Commission may  
7 appropriately go beyond the scope of the traditional rules of evidence. Given the  
8 simplicity of the requests, and the Commission’s previous order to EFCA, an order  
9 compelling a response is justified.

10 Second, EFCA’s reliance on *NAACP* is misplaced. The Supreme Court in *NAACP*  
11 relied upon the uncontested fact that individual members of the NAACP would face  
12 harmful retaliation in Alabama in the environment of the 1950s. “[NAACP] has made an  
13 uncontroverted showing that on past occasions revelation of the identity of its rank-and-  
14 file members has exposed these members to economic reprisal, loss of employment, threat  
15 of physical coercion, and other manifestations of public hostility.” *NAACP*, 357 U.S. at  
16 462. There is, of course, no such suggestion here. Moreover, in *NAACP*, the State of  
17 Alabama was seeking the membership information in an action it brought against the  
18 NAACP. Here, EFCA voluntarily chose to intervene in this litigation. Finally, any  
19 confidentiality concern – about sources of funding or any other issue – can be resolved  
20 pursuant to the Protective Agreement EFCA and APS have already agreed to in this  
21 proceeding.

- 22 ii. APS 1.1(b): “Provide a list of EFCA’s members and members  
23 of its Board of Directors or any other governing board or  
24 decision-making body.”

25 EFCA objected on three grounds: (1) that the “request is not reasonably calculated  
26 to lead to the discovery of admissible evidence;” (2) the disclosure would violate EFCA’s  
27 First Amendment rights, citing *NAACP v. Alabama*, 357 U.S. 449 (1958);<sup>6</sup> and, (3) that

28 <sup>6</sup> EFCA’s first and second objections fail for the reasons described in § II(c)(i).

1 “the phrase ‘other decision making body’ is undefined and susceptible to multiple  
2 interpretations.”

3 In other words, EFCA refused to identify its members – the very members whose  
4 interests EFCA is “promoting” in this proceeding – or the names of the individuals who  
5 serve on its governing board or decision-making body. Again, this is the most basic sort  
6 of discovery inquiry.

7 EFCA’s objection that the term “other decision-making body” is undefined and  
8 susceptible to multiple interpretations is an apt illustration of EFCA’s unwillingness to  
9 cooperate during the proceeding. The term is self-evident, particularly when considered  
10 in the context of the Data Request with its references to a Board of Directors or governing  
11 board.

12 EFCA’s stonewalling objections demonstrate why the Presiding Officer should  
13 compel EFCA to meaningfully respond in a manner that answers *who*, *what*, and *why*  
14 EFCA is and is present in this rate-making case.

15  
16 iii. APS 1.2(a): “Does EFCA sell any products or provide any  
17 services?;” APS 1.2(b): “If so, describe the product or services  
18 it sells, identify to whom and state the annual revenue from  
the sales.”

19 EFCA objected on two grounds:<sup>7</sup> (1) that the “request is not reasonably calculated  
20 to lead to the discovery of admissible evidence;”<sup>8</sup> and (2) that the phrase “provide any  
21 services” is undefined and susceptible to multiple interpretations.

22 Again, EFCA’s second objection illustrates EFCA’s unwillingness to answer the  
23 most simple questions. As detailed above, EFCA claims it is uniquely interested in this  
24 proceeding. What products and services it sells – if any – is simple information directly  
25 relevant to its alleged interests. All APS seeks is information to explain *how* and *why*  
26 EFCA is interested.

27 <sup>7</sup> EFCA repeated its objections for APS 1.2(a) when it failed to reply to APS 1.2(b).

28 <sup>8</sup> EFCA’s first objection fails for the reasons described in § II(c)(i).



1  
2 iv. APS 1.3(a): “Does any member of EFCA provide services to  
3 or for EFCA, such as accounting, tax, legal, physical resources  
4 (office space), and/or consulting?”; APS 1.3(b): “If so,  
5 describe with particularity the service being provided and any  
6 fees being charged to EFCA.”

7 EFCA objected on four grounds:<sup>9</sup> (1) that the “request is not reasonably calculated  
8 to lead to the discovery of admissible evidence”;<sup>10</sup> (2) that the information is confidential  
9 and may be subject to attorney-client privilege; (3) the information is subject to the  
10 accountant-client privilege; (4) that the identity of a consulting expert is confidential.

11 First, the Data Requests do not seek any information that would be protected by  
12 either the attorney-client or accountant-client privilege. APS’s Data Requests seek  
13 information about the relationship between EFCA and its members. The Data Requests  
14 do not seek the substance of any communication, but ask what roles EFCA and its  
15 members play. The fact of providing legal services is not privileged and, similarly, the  
16 Arizona accountant-privilege statute protects only communications. *Granger v. Wisner*,  
17 134 Ariz. 377, 379-80, 656 P.2d 1238, 1240-1 (1982) (“[The attorney-client privilege]  
18 does not extend to facts which are not part of the communication between lawyer and  
19 client. Thus, the fact that a client has consulted with an attorney ... [is] normally outside  
20 the scope and purpose of the privilege.”); A.R.S. § 32-749(A) (protecting client records or  
21 information received by a certified public accountant, not the existence of a relationship as  
22 EFCA asserts). If, in fact, one or more of EFCA’s members provides either accounting or  
23 legal services to EFCA, EFCA can describe the nature of those services in a general  
24 manner that does not disclose any privileged information. But there is no justification for  
25 EFCA’s blanket objection.

26 Further, EFCA cites to decisions from other jurisdictions to argue that the identity  
27 of consulting experts is confidential and protected here. APS is willing to exclude from

28 <sup>9</sup> EFCA repeated its objections for APS 1.3(a) when it failed to reply to APS 1.3(b).

<sup>10</sup> EFCA’s first objection fails for the reasons described in § II(c)(i).

1 EFCA's response at this time the individual identity of any person from an EFCA member  
2 who has served as a consulting expert in this proceeding. Beyond that, EFCA should be  
3 compelled to respond. None of the cited authority govern this proceeding. Instead, the  
4 Commission directs discovery in the manner described in *Sulphur Springs*.

5 v. APS 1.4(a): "Identify the senior level executives of EFCA."

6 EFCA objected on two grounds: (1) that the "request is not reasonably calculated  
7 to lead to the discovery of admissible evidence;" and (2) the disclosure would violate  
8 EFCA's First Amendment rights, citing *NAACP v. Alabama*, 357 U.S. 449 (1958).

9 EFCA's objections fail for the same reasons explained in § III(a). There can be no  
10 justification whatsoever for refusing to respond to such a basic inquiry.

11 vi. APS 1.4(b): "Identify who or what owns EFCA and in what  
12 percentage."

13 EFCA objected on three grounds: (1) the term "own" is vague and ambiguous, and  
14 that to the extent it refers to a membership interest, the information was previously  
15 disclosed; (2) "the rights of EFCA's members do not translate into percentages, and  
16 EFCA cannot answer this question;" and, (3) that the "request is not reasonably calculated  
17 to lead to the discovery of admissible evidence."<sup>11</sup>

18 EFCA's first and second objections are additional examples of EFCA's  
19 unwillingness to cooperate during the proceeding. Much like the terms EFCA objected to  
20 previously, here, the terms in question can be readily understood in context.

21 vii. APS 1.5(a): "How many employees does EFCA have?";  
22 APS 1.5(b): "How many of those employees are also  
23 employees of one or more EFCA members? If any, which  
24 member or members?"; APS 1.5(c): "For those EFCA  
25 employees that are also employees of an EFCA member,  
26 fully describe in detail how costs are allocated between  
27 members for those employees."

28 EFCA objected to this Data Request on three grounds: (1) that the "request is not

---

<sup>11</sup> EFCA's third objection fails for the reasons described in § II(c)(i).

1 reasonably calculated to lead to the discovery of admissible evidence”; (2) the disclosure  
2 would violate EFCA’s First Amendment rights, citing *NAACP v. Alabama*, 357 U.S. 449  
3 (1958);<sup>12</sup> and, (3) that the “request is formulated to harass EFCA and has no legitimate  
4 basis.”

5 As to EFCA’s third objection, APS is entitled to know who or what EFCA is so  
6 that APS can properly recognize and accommodate EFCA’s interests in this matter.  
7 Asking how many employees an organization has cannot be interpreted as harassment,  
8 particularly when it has a legitimate basis.

9  
10 viii. APS 1.6: “Provide all communications and documents  
11 exchanged between EFCA and SolarCity regarding APS’s  
12 rate case.”

13 EFCA’s objection provides that: “EFCA objects to this discovery request in that  
14 any responsive documents would be confidential communications between EFCA and its  
15 Members. The communications requested among the Members of EFCA, including  
16 SolarCity, would constitute confidential, litigation work product and is thus not relevant  
17 evidence or reasonably calculated to lead to the discovery of admissible evidence.”

18 This objection fails for any number of reasons. First, EFCA incorrectly asserts that  
19 labels of “confidential” or “work product” make information irrelevant. That is not the  
20 case. While it is true that it may make the information subject to the Protective  
21 Agreement between APS and EFCA, it does not excuse EFCA’s failure to respond.

22 Second, EFCA has gone to great lengths to assert that it is a separate entity from  
23 SolarCity. In responding to several of APS’s other discovery responses that are not the  
24 subject of this motion, EFCA made clear that it is not its members, does not have their  
25 documents, and can only request documents from its members. *See, e.g.*, EFCA’s  
26 Objection to APS Data Request 1.9. The work product protection, however, only applies  
27

28 <sup>12</sup> EFCA’s first and second objections fail for the reasons described in § II(c)(i).

1 to documents created by a party or its representative.<sup>13</sup> EFCA cannot have it both ways. It  
2 either is SolarCity and the work product protection might apply, or it is not SolarCity and  
3 the work product protection does not apply.

4 Third, EFCA's claim that its communications with its members is work product  
5 belies EFCA's claim that none of its members have an interest in this proceeding. *See*  
6 *Energy Freedom Coalition of America's Supplemental Response to Arizona Public*  
7 *Service Company's First Set of Data Requests*, APS Docket E-01345A-16-0036; E-  
8 01345A-16-0123 (November 18, 2016), 16 ("**The business activities of EFCA members**  
9 **have no relevance to the Commission's task of setting just and reasonable rates,**  
10 **especially in other service areas or statewide.**") (emphasis added). EFCA cannot  
11 simultaneously claim a privilege while also claiming its members are disinterested.

12 Finally, to the extent that EFCA claims work-product protection, EFCA must  
13 provide a privilege log detailing the documents, the privilege asserted, and who has seen  
14 each document in question. As EFCA noted in a previous filing, the party resisting  
15 discovery has the burden of proof to establish that it should be excused from answering or  
16 timely participating in discovery.<sup>14</sup> Therefore, EFCA has the burden of proof to establish  
17 that any documents subject to a claim of work product were otherwise discoverable but  
18 prepared by the party's representative in anticipation of litigation for the immunity to  
19 apply. *See* Ariz. R. Civ. P. 26(B); *Salvation Army v. Bryson*, 229 Ariz. 204, 207, 273 P.3d  
20 656, 659 (Ct. App. 2012) (explaining that the work-product doctrine "addresses the  
21 'discovery of documents and tangible things otherwise discoverable under subdivision  
22 (b)(1) of [Rule 26] and prepared in anticipation of litigation or for trial by or for another  
23

24 <sup>13</sup> *See* Ariz. Rule of Civil Procedure 26(b)(3); *see also State ex rel. Corbin v. Weaver*, 140 Ariz.  
25 123, 129 (Ct. App. 1984) (holding that the work product protects "documents which contain the  
26 mental impressions, conclusions, opinions or legal theories of an attorney or other representative  
of a party concerning the litigation.").

27 <sup>14</sup> *Energy Freedom Coalition of America's Response to Motion for Procedural Conference and*  
28 *Interim Protective Order*, APS Docket No. E-10345A-16-0036; E-01345A-16-0123 (October 12,  
2016), 3:18-19 ("As the party resisting discovery, APS has the burden of proof to establish that it  
should be excused from answering or timely participating in discovery.").

1 party or by or for that other party's representative (including the other party's attorney).”  
2 (internal citations and emphasis omitted)).

3  
4 ix. APS 1.7: “Please provide any and all studies or analysis  
5 performed by or for EFCA, or in EFCA’s possession, that  
6 attempt to predict or in any way analyze the impact of APS’s  
7 rate proposal (or any part thereof) on: (a) the ability of  
8 EFCA’s member companies to sell or lease systems in APS’s  
9 service territory; (b) the future rate of adoption of DG in  
10 APS’s service territory; (c) the future economics of DG to the  
11 customer in APS’s service territory; or (d) the future  
12 economics of DG to the solar provider in APS’s service  
13 territory.

14 EFCA objected that the request called for the production of work product. APS  
15 requests EFCA provide a privilege log for responsive material, for the same reasons  
16 explained in § II(viii) (APS Data Request 1.6) above.

### 17 **III. CONCLUSION**

18 EFCA, (and its members) wants to participate in this rate-making case while  
19 simultaneously masking its interests, its business, and its structure. Allowing EFCA to do  
20 so would require ignoring the Commission precedent that EFCA helped create. For the  
21 above reasons, APS asks the Presiding Officer to issue a procedural order requiring EFCA  
22 to respond to APS Data Requests 1.1 to 1.4(b) and 1.5 to 1.7.

23 RESPECTFULLY SUBMITTED this 7th day of December 2016.

24 ARIZONA PUBLIC SERVICE COMPANY

25 By \_\_\_\_\_

26 Thomas A. Loquvam

27 Thomas L. Mumaw

28 Melissa M. Krueger

Amanda Ho

Attorneys for Arizona Public Service Company



1 Original and 13 copies of the foregoing  
2 filed this 7th day of December 2016, with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
*I hereby certify that I have this day served a copy of the foregoing document on all parties of  
record in this proceeding by regular or electronic mail to:*

1 Albert Acken  
2 Ryley Carlock & Applewhite  
3 One N. Central Ave., Ste 1200  
4 Phoenix, AZ 85004-4417

Ann-Marie Anderson  
Wright Welker & Paoule, PLC  
10429 South 51st Street., Suite 285  
Phoenix, AZ 85009

5 Brendon Baatz  
6 Manager  
7 ACEEE  
8 529 14th Street N.W., Suite 600  
9 Washington, DC 20045-1000

Stephen Baron  
Consultant  
J. Kennedy & Associates  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075

10 Patrick Black  
11 Attorney  
12 Fennemore Craig  
13 2394 East Camelback Road, Suite 600  
14 Phoenix, AZ 85016

Kurt Boehm  
Attorney  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

15 Jeff Hatch-Miller  
16 Utilities Division  
17 Arizona Corporation Commission  
18 1200 W. Washington  
19 Phoenix, AZ 85007

Bradley Carroll  
Assistant General Counsel, State Regulatory  
Tucson Electric Power Company  
88 East Broadway Blvd.  
Mail Stop HQE910  
P.O. Box 711  
Tucson, AZ 85702

20 Steve Chriss  
21 Senior Manager, Energy Regulatory  
22 Analysis  
23 Walmart Stores  
24 2001 Southeast 10th Street  
25 Bentonville, AR 72716-5530

John B. Coffman  
John B. Coffman, LLC  
871 Tuxedo Blvd.  
St. Louis, MO 63119

26 Jody Cohn  
27 Attorney  
28 Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, OH 45202

Kelly Crandall  
EQ Research LLC  
1580 Lincoln Street, Suite 880  
Denver, CO 80203

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C. Webb Crockett  
Attorney  
Fennemore Craig  
2394 East Camelback Road, Suite 600  
Phoenix, AZ 85016

Jim Downing  
PO Box 70  
Salome, AZ 85648

Nicholas Enoch  
Attorney  
Lubin & Enoch, P.C.  
349 North Fourth Ave.  
Phoenix, AZ 85003

Patricia Ferre  
P.O. Box 433  
Payson, AZ 85547

Kevin Fox  
Keyes & Fox, LLP  
1580 Lincoln Street, Suite 880  
Denver, CO 80203

Jason D. Gellman  
Snell & Wilmer LLP  
400 E. Van Buren Street, Suite 800  
Phoenix, AZ 85004

Brittany L. DeLorenzo  
Corporate Counsel  
IO DATA CENTERS, LLC  
615 N. 48th St.  
Phoenix, AZ 85008

Greg Eisert  
Director Government Affairs Chairman  
Sun City Homeowners Association  
10401 W. Coggins Drive  
Sun City, AZ 85351

Giancarlo Estrada  
Kamper, Estrada and Simmons, LLP  
3030 N. Third St., Suite 770  
Phoenix, AZ 85012

Denis M. Fitzgibbons  
FITZGIBBONS LAW OFFICES, PLC  
P.O. Box 11208  
Casa Grande, AZ 85230

Richard Gayer  
526 W. Wilshire Dr.  
Phoenix, Arizona 85003

Al Gervenack  
Director  
Property Owners & Residents Association  
13815 Camino del Sol  
Sun City West, AZ 85372

1 Meghan Grabel  
2 Attorney for AIC  
3 Osborn Maledon, P.A.  
4 2929 North Central Avenue  
5 Phoenix, AZ 85012

Tom Harris  
Chairman  
Arizona Solar Energy Industries Association  
2122 W. Lone Cactus Dr. Suite 2  
Phoenix, AZ 85027

6 Garry D. Hays  
7 Attorney for ASDA  
8 Law Offices of Garry D. Hays, PC  
9 2198 E Camelback Rd, Suite 305  
10 Phoenix, AZ 85016

Chris Hendrix  
Director of Markets & Compliance  
Wal-Mart Stores, Inc.  
2011 S.E. 10<sup>th</sup> Street  
Bentonville, AR 72716

11 Kevin Hengehold  
12 Energy Program Director  
13 Arizona Community Action Association  
14 2700 n. 3rd St., Suite 3040  
15 Phoenix, AZ 85004

Kevin Higgins  
Energy Strategies, LLC  
215 South State Street, Suite 200  
Salt Lake City, UT 84111

16 Timothy Hogan  
17 Attorney  
18 Arizona Center for Law in the Public Interest  
19 514 W. Roosevelt St.  
20 Phoenix, AZ 85003

Steve Jennings  
AARP  
16165 N. 83rd Ave, Suite 201  
Peoria, AZ 85382

21 Thomas A. Jerigan  
22 139 Barnes Drive, Suite 1  
23 Tyndall AFB, FL 32403

Teena Jibilian  
Assistant Chief Administrative Law Judge  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

24 Alan Kierman  
25 Director of Real Estate & Special Counsel  
26 IO Data Centers  
27 615 N. 48th Street  
28 Phoenix, AZ 85008

Briana Kobor  
Program Director  
Vote Solar  
360 22nd Street, Suite 730  
Oakland, CA 94612

1	Samuel L. Lofland	Craig Marks
2	Ryley Carlock & Applewhite	Attorney
3	One N. Central Ave., Ste 1200	AURA
4	Phoenix, AZ 85004-4417	10645 N. Tatum Blvd. Ste. 200-676
5		Phoenix, AZ 85028
6	Jay Moyes	Jason Moyes
7	Moyes Sellers & Hendricks Ltd.	Moyes Sellers & Hendricks Ltd.
8	1850 N. Central Ave., Suite 1100	1850 N. Central Ave., Suite 1100
9	Phoenix, AZ 85004	Phoenix, AZ 85004
10	Michael Patten	Greg Patterson
11	Attorney	Attorney
12	SNELL & WILMER L.L.P.	Munger Chadwick
13	One Arizona Center	916 West Adams Suite 3
14	400 E. Van Buren Street, Suite 1900	Phoenix, AZ 85007
15	Phoenix, AZ 85004-2202	
16	Ebony Payton	Robert L. Pickels, Jr.
17	139 Barnes Drive, Suite 1	Sedona City Attorney's Office
18	Tyndall AFB, FL 32403	102 Roadrunner Drive
19		Sedona, AZ 86336
20	Jason Pistiner	Daniel Pozefsky
21	Singer Pistiner P.C.	Chief Counsel
22	15849 N. 71st Street, Suite 100	RUCO
23	Scottsdale, AZ 85254	1110 W. Washington, Suite 220
24		Phoenix, AZ 85007
25	Steven Puck	Pat Quinn
26	Director Government Affairs	AURA
27	Sun City Homeowners Association	5521 E. Cholla St.
28	10401 W. Coggins Drive	Scottsdale, AZ 85254
	Sun City, AZ 85351	



1	Kaitlyn A. Redfield-Ortiz	Court Rich
2	Lubin & Enoch, P.C.	Attorney
3	349 N. 4th Avenue	Rose Law Group, pc
4	Phoenix, AZ 85003	7144 East Stetson Drive, Suite 300
5		Scottsdale, AZ 85251
6	Rob Robbins	Lawrence Robertson, Jr.
7	President	Attorney At Law
8	Property Owners & Residents Association	210 West Continental Road
9	13815 Camino del Sol	Suite 216A
10	Sun City West, AZ 85372	Green Valley, AZ 85622
11		
12	Timothy Sabo	Jeff Schlegel
13	Snell & Wilmer	SWEEP
14	400 East Van Buren	1167 W. Samalayuca Dr.
15	Suite 1900	Tucson, AZ 85704
16	Phoenix, AZ 85004	
17		
18	Thomas E. Stewart	Sheryl A. Sweeney
19	General Manager	Ryley Carlock & Applewhite
20	Granite Creek Power & Gas LLC	One N. Central Ave., Ste 1200
21	5316 East Voltaire Avenue	Phoenix, AZ 85004-4417
22	Scottsdale, AZ 85254-3643	
23		
24	Gregory W. Tillman	Emily A. Tornabene
25	Senior Manager, Energy Regulatory	LUBIN & ENOCH, PC
26	Analysis	349 North Fourth Avenue
27	Wal-Mart Stores, Inc.	Phoenix, AZ 85003
28	2011 S.E. 10th Street	
29	Bentonville, AR 72716	
30		
31	Janet Wagner	Scott Wakefield
32	Legal Division	Attorney
33	Arizona Corporation Commission	Hinton & Curry, P.L.L.C.
34	1200 W. Washington	5045 N. 12th Street, Suite 110
35	Phoenix, AZ 85007	Phoenix, AZ 85014-3302
36		
37		
38		
39		
40		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Paul J. Walker  
Executive Director  
ConservAmerica  
971 South Centerville Road  
PMB 139  
Sturgis, MI 49091

Charles Wesselhoft  
Deputy County Attorney  
Pima County  
32 North Stone Ave., Suite 2100  
Tucson, AZ 85701

Ken Wilson  
Western Resource Advocates  
2260 Baseline Road, Suite 200  
Boulder, CO 80302

Gary Yaquinto  
President & CEO  
Arizona Investment Council  
2100 N. Central Avenue, Suite 210  
Phoenix, AZ 85004

Cynthia Zwick  
2700 N. 3rd Street, Suite 3040  
Phoenix, AZ 85004



Anthony Wanger  
President  
IO Data Centers  
615 N. 48th Street  
Phoenix, AZ 85008

Karen White  
Attorney  
Air Force Utility Law Field Support Center  
AFLOA/JACL-ULFSC, 139 Barnes Drive  
Tyndall AFB, FL 32403

Warren Woodward  
200 Sierra Road  
Sedona, AZ 86336

Ellen Zuckerman  
Senior Associate  
4231 E. Catalina Drive  
Phoenix, AZ 85018

# EXHIBIT 1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman

4 BOB STUMP

5 BOB BURNS

6 TOM FORESE

7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION OF  
9 ARIZONA PUBLIC SERVICE COMPANY  
10 FOR A HEARING TO DETERMINE THE FAIR  
11 VALUE OF THE UTILITY PROPERTY OF  
12 THE COMPANY FOR RATEMAKING  
13 PURPOSES, TO FIX A JUST AND  
14 REASONABLE RATE OF RETURN  
15 THEREON, TO APPROVE RATE  
16 SCHEDULES DESIGNED TO DEVELOP  
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**APPLICATION FOR SUBPOENA DUCES  
TECUM**

18 IN THE MATTER OF FUEL AND  
19 PURCHASED POWER PROCUREMENT  
20 AUDITS FOR ARIZONA PUBLIC SERVICE  
21 COMPANY.

DOCKET NO. E-01345A-16-0123

22 Arizona Public Service Company requests the issuance of a subpoena duces tecum to  
23 SolarCity, Inc., pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-109, and Ariz. R. Civ. P. 30 and  
24 45 in connection with the administrative hearing in the above-captioned action.

25 DATED this 8th day of November, 2016.

26 By: 

27 Thomas A. Loquvam, Arizona Public Service Company  
28 Applicant's Name

400 N. 5<sup>th</sup> Street M/S 8695  
Address

Phoenix, AZ 85004-3902  
City, State, Zip

602-250-3616  
Telephone

Thomas.Loquvam@pinnaclewest.com  
E-mail Address

1 ORIGINAL and thirteen (13) copies  
2 of the foregoing filed this 8th day of  
November 2016, with:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
5 Phoenix, Arizona 85007

6  
7 COPY of the foregoing emailed / mailed  
this 8th day of November 2016, to:

8 Albert Acken  
9 Ryley Carlock & Applewhite  
One N. Central Ave., Ste 1200  
10 Phoenix, AZ 85004-4417

Janice Alward  
Legal Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, AZ 85007

11  
12 Brendon Baatz  
13 Manager  
ACEEE  
14 529 14th Street N.W., Suite 600  
Washington, DC 20045-1000

Stephen Baron  
Consultant  
J. Kennedy & Associates  
570 Colonial Park Drive, Suite 305  
Roswell, GA 30075

15  
16 Patrick Black  
17 Attorney  
Fennemore Craig  
18 2394 East Camelback Road, Suite 600  
Phoenix, AZ 85016

Kurt Boehm  
Attorney  
BOEHM, KURTZ & LOWRY  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202

19  
20 Thomas Broderick  
21 Utilities Division  
Arizona Corporation Commission  
1200 W. Washington  
22 Phoenix, AZ 85007

Bradley Carroll  
Assistant General Counsel, State  
Regulatory  
Tucson Electric Power Company  
88 East Broadway Blvd.  
Mail Stop HQE910  
P.O. Box 711  
Tucson, AZ 85702

23  
24 Steve Chriss  
25 Senior Manager, Energy Regulatory  
26 Analysis  
Walmart Stores  
27 2001 Southeast 10th Street  
Bentonville, AR 72716-5530

Jody Cohn  
Attorney  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 1510  
Cincinnati, OH 45202

28



1 C. Webb Crockett  
2 Attorney  
3 Fennemore Craig  
2394 East Camelback Road, Suite 600  
Phoenix, AZ 85016

4  
5 Jim Downing  
6 PO Box 70  
Salome, AZ 85648

7  
8  
9 Nicholas Enoch  
10 Attorney  
Lubin & Enoch, P.C.  
349 North Fourth Ave.  
Phoenix, AZ 85003

11  
12  
13 Patricia Ferre  
14 P.O. Box 433  
Payson, AZ 85547

15  
16  
17 Jason D. Gellman  
18 Snell & Wilmer LLP  
400 E. Van Buren Street, Suite 800  
Phoenix, AZ 85004

19  
20  
21 Meghan Grabel  
22 Attorney for AIC  
Osborn Maledon, P.A.  
2929 North Central Avenue  
Phoenix, AZ 85012

Brittany L. DeLorenzo  
Corporate Counsel  
IO DATA CENTERS, LLC  
615 N. 48th St.  
Phoenix, AZ 85008

Greg Eisert  
Director Government Affairs  
Chairman  
Sun City Homeowners Association  
10401 W. Coggins Drive  
Sun City, AZ 85351

Giancarlo Estrada  
Kamper, Estrada and Simmons, LLP  
3030 N. Third St., Suite 770  
Phoenix, AZ 85012

Richard Gayer  
526 W. Wilshire Dr.  
Phoenix, Arizona 85003

Al Gervenack  
Director  
Property Owners & Residents  
Association  
13815 Camino del Sol  
Sun City West, AZ 85372

Tom Harris  
Chairman  
Arizona Solar Energy Industries  
Association  
2122 W. Lone Cactus Dr. Suite 2  
Phoenix, AZ 85027

1 Chris Hendrix  
2 Director of Markets & Compliance  
3 Wal-Mart Stores, Inc.  
4 2011 S.E. 10th Street  
5 Bentonville, AR 72716

6 Kevin Higgins  
7 Energy Strategies, LLC  
8 215 South State Street, Suite 200  
9 Salt Lake City, UT 84111

10 Teena Jibilian  
11 Assistant Chief Administrative Law Judge  
12 Arizona Corporation Commission  
13 1200 W. Washington  
14 Phoenix, AZ 85007

15 Briana Kobor  
16 Program Director  
17 Vote Solar  
18 360 22nd Street, Suite 730  
19 Oakland, CA 94612

20 Craig Marks  
21 Attorney  
22 AURA  
23 10645 N. Tatum Blvd. Ste. 200-676  
24 Phoenix, AZ 85028

25 Jason Moyes  
26 Moyes Sellers & Hendricks Ltd.  
27 1850 N. Central Ave., Suite 1100  
28 Phoenix, AZ 85004

Kevin Hengehold  
Energy Program Director  
Arizona Community Action  
Association  
2700 N. 3rd St., Suite 3040  
Phoenix, AZ 85004

Timothy Hogan  
Attorney  
Arizona Center for Law in the Public  
Interest  
514 W. Roosevelt St.  
Phoenix, AZ 85003

Alan Kierman  
Director of Real Estate & Special  
Counsel  
IO Data Centers  
615 N. 48th Street  
Phoenix, AZ 85008

Samuel L. Lofland  
Ryley Carlock & Applewhite  
One N. Central Ave., Ste 1200  
Phoenix, AZ 85004-4417

Jay Moyes  
Moyes Sellers & Hendricks Ltd.  
1850 N. Central Ave., Suite 1100  
Phoenix, AZ 85004

Michael Patten  
Attorney  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren Street, Suite 1900  
Phoenix, AZ 85004-2202

1 Greg Patterson  
2 Attorney  
3 Munger Chadwick  
4 916 West Adams Suite 3  
5 Phoenix, AZ 85007

6 Steven Puck  
7 Director Government Affairs  
8 Sun City Homeowners Association  
9 10401 W. Coggins Drive  
10 Sun City, AZ 85351

11 Kaitlyn A. Redfield-Ortiz  
12 Lubin & Enoch, P.C.  
13 349 N. 4th Avenue  
14 Phoenix, AZ 85003

15 Rob Robbins  
16 President  
17 Property Owners & Residents Association  
18 13815 Camino del Sol  
19 Sun City West, AZ 85372

20 Jeff Schlegel  
21 SWEEP  
22 1167 W. Samalayuca Dr.  
23 Tucson, AZ 85704

24 Gregory W. Tillman  
25 Senior Manager, Energy Regulatory  
26 Analysis  
27 Wal-Mart Stores, Inc.  
28 2011 S.E. 10th Street  
Bentonville, AR 72716

Scott Wakefield  
Attorney  
Hinton & Curry, P.L.L.C.  
5045 N. 12th Street, Suite 110  
Phoenix, AZ 85014-3302

Daniel Pozefsky  
Chief Counsel  
RUCO  
1110 W. Washington, Suite 220  
Phoenix, AZ 85007

Pat Quinn  
AURA  
5521 E. Cholla St.  
Scottsdale, AZ 85254

Court Rich  
Attorney  
Rose Law Group, pc  
7144 East Stetson Drive, Suite 300  
Scottsdale, AZ 85251

Lawrence V. Robertson, Jr.  
Attorney At Law  
210 Continental Road, Suite 216A  
Green Valley, AZ 85622

Sheryl A. Sweeney  
Ryley Carlock & Applewhite  
One N. Central Ave., Ste 1200  
Phoenix, AZ 85004-4417

Emily A. Tornabene  
LUBIN & ENOCH, PC  
349 North Fourth Avenue  
Phoenix, AZ 85003

Anthony Wanger  
President  
IO Data Centers  
615 N. 48th Street  
Phoenix, AZ 85008

1 Charles Wesselhoft  
2 Deputy County Attorney  
3 Pima County  
4 32 North Stone Ave., Suite 2100  
5 Tucson, AZ 85701

6 Warren Woodward  
7 200 Sierra Road  
8 Sedona, AZ 86336

9 Ellen Zuckerman  
10 Senior Associate  
11 4231 E. Catalina Drive  
12 Phoenix, AZ 85018

13 Thomas A. Jernigan  
14 Federal Executive Agencies – U.S. Airforce  
15 Utility Law Field Support Center  
16 139 Barnes Drive, Suite 1  
17 Tyndall Air Force Base, FL 32403

18 Chinyere Ashley Osuala  
19 David Bender  
20 Earthjustice  
21 1625 Massachusetts Ave. NW, Suite 702  
22 Washington, DC 20036

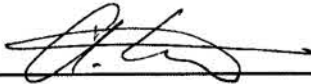
Ken Wilson  
Western Resource Advocates  
2260 Baseline Road, Suite 200  
Boulder, CO 80302

Gary Yaquinto  
President & CEO  
Arizona Investment Council  
2100 N. Central Avenue, Suite 210  
Phoenix, AZ 85004

Cynthia Zwick  
2700 N. 3rd Street, Suite 3040  
Phoenix, AZ 85004

Karen S. White  
139 Barnes Drive, Suite 1  
Tyndall AFB, FL 32403

23  
24  
25  
26  
27  
28



---

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman

4 BOB STUMP

5 BOB BURNS

6 TOM FORESE

7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION OF  
9 ARIZONA PUBLIC SERVICE COMPANY  
10 FOR A HEARING TO DETERMINE THE FAIR  
11 VALUE OF THE UTILITY PROPERTY OF  
12 THE COMPANY FOR RATEMAKING  
13 PURPOSES, TO FIX A JUST AND  
14 REASONABLE RATE OF RETURN  
15 THEREON, TO APPROVE RATE  
16 SCHEDULES DESIGNED TO DEVELOP  
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

**SUBPOENA DUCES TECUM**

18 IN THE MATTER OF FUEL AND  
19 PURCHASED POWER PROCUREMENT  
20 AUDITS FOR ARIZONA PUBLIC SERVICE  
21 COMPANY.

DOCKET NO. E-01345A-16-0123

22 TO: SolarCity, Inc.  
23 c/o CT Corporation System  
24 3800 N. Central Ave. Suite 460  
25 Phoenix, AZ 85012

26 YOU ARE HEREBY COMMANDED, pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. R14-3-  
27 109 and Ariz. R. Civ. P. 30 and 45 to appear and testify under oath in connection with the  
28 administrative hearing in the above-captioned action.

BEFORE WHOM APPEARANCE TO BE MADE: Arizona Corporation Commission

DATE AND TIME OF APPEARANCE: Monday, November 28, 2016 at 9:00 a.m.

PLACE OF APPEARANCE: Arizona Public Service Company  
400 N. 5<sup>th</sup> Street M/S 8695  
Phoenix, AZ 85004-3902

YOU ARE COMMANDED to appear and give testimony concerning:

See Exhibit A



1 YOU ARE COMMANDED to bring with you and produce for inspection and copying the  
2 following:

3 The documentation and information set forth in Exhibit A.

4 YOU HAVE BEEN SUBPOENED BY: Arizona Public Service Company

5 400 N. 5<sup>th</sup> Street M/S 8695

6 Phoenix, AZ 85004-3902

7 Telephone: 602-250-3616

8 E-mail: Thomas.Loquvam@pinnaclewest.com

9 DISOBEDIENCE OF THIS SUBPOENA constitutes contempt of the Arizona Corporation  
10 Commission and may subject you to further proceedings and penalties under law, pursuant to A.R.S.  
11 § 40-424.

12 Given under by hand the seal of the Arizona Corporation Commission this 9<sup>th</sup> day of  
13 November, 2016.



27  
28

A handwritten signature in black ink, reading "Jodi A. Jerich".

Jodi A. Jerich, Executive Director  
Arizona Corporation Commission

## EXHIBIT A

### Definitions:

"SolarCity" means SolarCity Corporation and/or any of its affiliates.

"APS" means Arizona Public Service Company.

"TEP" means Tucson Electric Power Company.

"UNS" means UNS Electric, Inc.

"SRP" means Salt River Project Agricultural and Power Improvement District.

"NV Energy" means NV Energy, Inc. and/or its subsidiaries, Nevada Power Company and Sierra Pacific Power Company.

"Agreement" means the written contractual arrangement between SolarCity and a third party ("customer") either by sale or lease, whereby SolarCity furnishes to customer a grid-tied rooftop photovoltaic solar system.

"PPA" means a purchase power agreement between SolarCity and a customer.

"Cost per kWh" refers to both cost to SolarCity and cost to the customer entering into an Agreement with SolarCity.

"Avoided Utility Cost per kWh" has the same meaning provided for in SolarCity's Agreements or if no such meaning exists, it means the amount Per kWh that a customer will avoid paying to its utility for electric service as a result of installing a solar system.

"Provide" means to produce and deliver a copy of the requested documentation, materials and other information in a form that can easily be read. If the documentation, materials or other information are stored in electronic form then it must be produced in a reasonably usable form.

"Rooftop solar system," "solar system," "solar," and "system" all mean the same thing and refer to a grid-tied photovoltaic rooftop solar system.

1. Provide any and all SolarCity sales materials, training manuals, or other documents that relate or refer to how SolarCity personnel explain the financial considerations of residential rooftop solar leases and sales to potential customers in APS's service territory.
2. Provide any and all documents in SolarCity's possession that show how financial considerations of residential rooftop solar leases and sales have been or are conveyed to potential customers in APS's service territory.
3. Provide any and all documentation, analyses, computations or reports of costs incurred per unit sold/leased in APS's service territory.

4. Provide any and all documentation, analyses, computations or reports showing future projections of sales and installation costs per unit sold or leased in APS's service territory.
5. Provide any and all documentation, analyses, computations or reports made on (i) the payback period necessary to attract a customer to install rooftop solar in APS's service territory; or (ii) the first year lease rate necessary to attract a customer to install rooftop solar in APS's service territory.
6. Provide any and all documentation, analyses, computations, or reports showing the total number of residential homes that currently host a rooftop solar system sold, leased or subject to a PPA by SolarCity in APS's service territory.
7. Provide any and all documentation, analyses, computations, or reports of SolarCity's lowest and highest cost per kWh (calculated as cents/kWh) for a leased system or a purchased system offered to a customer in the APS's territory for each month over the last three years.
8. Provide any and all documentation, analyses, computations and reports of SolarCity's average rate of return on systems sold or leased in APS's territory for each month over the last three years.
9. Provide any and all documentation, analyses, computations, or reports showing SolarCity's estimated share of the residential rooftop solar market in
  - a. TEP's service territory;
  - b. APS's service territory;
  - c. UNS's service territory; and
  - d. The State of Arizona.
10. Provide any and all documentation and reports that identify the states in which SolarCity operates and conducts business.
11. Provide any and all documentation, analyses, computations, or reports showing the lowest and highest cost per kWh (calculated as cents/kWh) for a leased or purchased system offered to a customer in every state in which SolarCity operates for the last three years.
12. Provide any and all documentation, analyses, computations, or reports showing SolarCity's average rate of return in each of the states in which it operates and conducts business for the last three years.
13. Provide any and all documentation, analyses, computations, or reports on the necessary kWh rate to achieve a sufficient payback period to attract customers in each utility service territory in which SolarCity operates for the last three years.
14. Provide any and all interconnection applications, lease Agreements and PPAs for residential solar projects installed in SRP territory in 2014.

15. Provide any and all documentation showing whether SolarCity offered any leases or PPAs without annual escalators in SRP's service territory during 2014.
16. Provide any and all documentation, analyses, computations, or reports showing the average cost per kWh to customers under leases or PPAs in SRP's service territory.
17. Provide any and all documentation, analyses, computations and reports showing (i) the "Avoided Utility Cost per kWh" (cents/kWh); and/or (ii) total projected savings expected upon installation of rooftop solar that were included in rooftop solar systems proposals present to
  - a. SRP customers in 2014;
  - b. SRP customers in 2015;
  - c. SRP customers in 2016;
  - d. TEP customers in 2014;
  - e. TEP customers in 2015;
  - f. TEP customers in 2016;
  - g. APS customers in 2014;
  - h. APS customers in 2015; and
  - i. APS customers in 2016.
18. Provide any and all documentation, analyses, computations and reports showing costs incurred per unit sold or leased in NV Energy's service territory in 2015. Costs may include but are not limited to panel costs, labor costs for installation, overhead costs, and customer acquisition costs.
19. Provide any and all documentation, analyses, computations and reports showing how many residential rooftop solar systems SolarCity built or caused to be built in 2015 in NV Energy's service territories.
20. Please provide any and all studies or analysis performed by or for SolarCity, or that SolarCity possesses, that attempt to predict or in any way analyze the impact of APS's rate proposal (or any part thereof) in this docket on
  - a. the ability of SolarCity to sell or lease systems in APS's service territory.
  - b. the future rate of adoption of DG;
  - c. the future economics of DG to the customer; or
  - d. the future economics of DG to the solar provider.
21. Provide any and all documentation, reports or analyses regarding Arizona customer complaints regarding SolarCity, including copies of any such complaints and any agreements, decisions resolving those complaints over that last three years.
22. Provide any and all documentation, materials, reports or analyses regarding the cost of materials for rooftop solar systems over the last three years.

23. Provide any and all documentation, materials, reports or analyses regarding warranty claims and defective material claims made by SolarCity customers in Arizona over the last three years.

# EXHIBIT 2

COPPERSMITH  
BROCKELMAN  
LAWYERS

Roopali H. Desai  
rdesai@cblawyers.com  
PH. (602) 381-5478  
FAX (602) 772-3778

2800 North Central Avenue, Suite 1200  
Phoenix, AZ 85004  
CBLAWYERS.COM

December 5, 2016

**Via U.S. Mail & E-Mail**

Thomas Loquvam, Esq.  
Arizona Public Service Company  
400 N. 5<sup>th</sup> Street M/S 8695  
Phoenix, AZ 85004-3902  
Thomas.Loquvam@pinnaclewest.com

**Re: *In the Matter of the Application of Arizona Public Service Company*  
Docket No. E-01345A-16-0036  
Objections of SolarCity Corporation to Subpoena Duces Tecum**

Dear Thomas:

As you know, this firm represents SolarCity Corporation ("SolarCity") for purposes of responding to the subpoena duces tecum served by Arizona Public Service Corporation ("APS") on SolarCity's statutory agent on November 9, 2016 (the "Subpoena"). Pursuant to our call on Wednesday, November 16, 2016, you agreed to extend the deadline in the Subpoena until December 5, 2016. This letter constitutes SolarCity's written objection to the Subpoena.

**A. PROCEDURAL OBJECTIONS.**

Initially, SolarCity addresses the purported basis and scope of the Subpoena.

The Subpoena claims that it is issued pursuant to A.R.S. §§ 40-241, 40-244, A.A.C. § R14-3-109, and Ariz. R. Civ. P. 30 and 45. As you know, A.R.S. § 40-241 does not apply to SolarCity because it only addresses the "[p]ower to examine records and personnel of public service corporations" and SolarCity is not a public service corporation. Likewise, A.R.S. § 40-244 does nothing to confer authority upon APS to subpoena records from or take deposition testimony of SolarCity; rather, this statute simply discusses the "[a]dministration of oaths and certification to official acts by commissioners; taking of depositions; [and] witness fees and mileage." We do not dispute that in appropriate circumstances, A.A.C. § R14-3-109 and Ariz. R. Civ. P. 45 may provide a basis for subpoenaing documents from third parties; however, for the reasons set forth below, we believe that the Subpoena is unreasonable and oppressive. Finally, we do not fully understand the Subpoena's reference to and reliance on Ariz. R. Civ. P. 30, which governs depositions. As discussed next, APS has not complied with the relevant rules, regulations, and procedures for deposing SolarCity. Therefore, APS's reference to Ariz. R. Civ. P. 30 as a basis for the Subpoena is meaningless.

Despite being captioned as a "subpoena duces tecum," the language of the Subpoena refers to a representative of SolarCity appearing and providing testimony. But in describing the scope of SolarCity's requested testimony, the Subpoena refers only to its "Exhibit A," which in



turn states that certain categories of documents are to be "provide[d]." Importantly, the term "provide" is specifically defined by APS as "to produce and deliver a copy of the requested documents, materials and other information in a form that can easily be read," which says nothing about testimony. Based on these objective indicia, SolarCity therefore presumes that the Subpoena's reference to the provision of "testimony" merely sets a time and place for compliance with the request for production of documents.

To the extent APS intends to compel the attendance of SolarCity at a deposition, the Subpoena is procedurally defective for that purpose.<sup>1</sup> Depositions in proceedings before the Commission must be taken "in the manner prescribed by law and of the civil procedure for the Superior Court of the state of Arizona," A.A.C. § R14-3-109(P), and the procedure for deposing a corporation is clear:

A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

Rule 30(b)(6), Ariz. R. Civ. P. (emphasis added). Because Exhibit A to the Subpoena refers only to categories of documents that are to be produced, not to matters for testimony at all, "the matters on which examination is requested" are plainly not described with the requisite "reasonable particularity." Indeed, there is no indication whatsoever as to what those matters might be. See, e.g., *Whiting v. Hogan*, No. 12-CV-08039-PHX-GMS, 2013 WL 1047012, at \*11 (D. Ariz. Mar. 14, 2013) ("The burden is on Plaintiffs, as the party requesting the deposition, to satisfy the 'reasonable particularity' standard of Rule 30(b)(6). Without further clarification, Defendants cannot reasonably designate and prepare a corporate representative to testify on their behalf regarding these broad lines of inquiry."). Under these circumstances, if by the Subpoena APS intended to compel SolarCity's attendance at a deposition, SolarCity objects to APS's failure to comply with the provisions of Ariz. R. Civ. P. 30(b)(6), and will not appear for a deposition until APS has fully complied with the requirements of that Rule.

## **B. GENERAL OBJECTIONS.**

SolarCity asserts the following general objections to the Subpoena: (1) the Subpoena is oppressive and clearly meant to harass because the information it seeks is not relevant or important to this proceeding, (2) the Subpoena is improper because it seeks the release of third-party SolarCity's confidential, trade secret, and proprietary information, and (3) the Subpoena is unnecessary because much of the information it seeks is already available to APS through other means.

---

<sup>1</sup> Further, we do not believe the Arizona Corporation Commission (the "Commission") or the Administrative Law Judge ("ALJ") in this docket are aware of or have approved APS's request – to the extent the Subpoena constitutes such a request – to depose SolarCity in this matter.



A subpoena issued by the Commission may be quashed if it is "unreasonable or oppressive." A.A.C. § R14-3-109(O)(2). We believe that the Subpoena is both.

**1. THE SUBPOENA SEEKS A HOST OF IRRELEVANT INFORMATION.**

**First**, the Subpoena is unreasonable and oppressive because it seeks the discovery of information that has absolutely no bearing on the issue before the Commission in this proceeding – APS's proposed rate changes. *Carrington v. Ariz. Corp. Comm'n*, 199 Ariz. 303, 305 ¶ 9, 18 P.3d 97, 99 (App. 2000) ("[A] party may resist the Commission's subpoena on grounds that . . . the subpoena seeks irrelevant information"); *see also State ex rel. Goddard v. W. Union Fin. Servs., Inc.*, 216 Ariz. 361, 368 ¶ 37, 166 P.3d 916, 923 (App. 2007) ("The reasonableness of a subpoena is not only a function of the type of information sought but also the scope of the information requested."). In this rate case, the Commission's task is to set just and reasonable rates. This includes valuing APS's property and setting the Company's reasonable rate of return, neither of which relate to the information sought in the Subpoena.

This is highlighted best by APS's requests for information regarding customer complaints and warranty claims [Subpoena ¶¶ 21, 23] and broad-based request for "cost of materials for rooftop solar systems" [*id.* ¶ 22], but is problematic for nearly all of the Subpoena's requests. Specifically, and at a minimum, APS cannot establish the relevance to this proceeding of SolarCity's (1) training of its sales personnel [*id.* ¶¶ 1-2], (2) internal cost data and future cost projections [*id.* ¶¶ 3-5, 7-9, 11-13, 16-18, 20], (3) business activities in another state [*id.* ¶ 19], or (4) business activities in the service areas of other non-parties to this proceeding [*id.* ¶¶ 15-17]. These requests, among others, are nothing more than an attempt to harass SolarCity and a distraction from the proceeding's goal of setting just and reasonable rates for Arizona consumers.

Here, SolarCity is neither a party to this proceeding, nor a public service corporation regulated by the Commission. To require a non-party to produce this irrelevant information is the very definition of unreasonable and oppressive, and we are confident that the Commission would agree. *See, e.g., Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980) (noting that restrictions on discovery "may be broader when a nonparty is the target"); *Laxalt v. McClatchy*, 116 F.R.D. 455, 458 (D. Nev. 1986) ("The standards for nonparty discovery . . . require a stronger showing of relevance than for simple party discovery."); *R. Prasad Indus. v. Flat Irons Envtl. Sols. Corp.*, No. CV-12-08261-PCT-JAT, 2014 WL 2804276, at \*2 (D. Ariz. June 20, 2014) ("To obtain discovery from a nonparty, a party must demonstrate that its need for discovery outweighs the nonparty's interest in nondisclosure").<sup>2</sup>

---

<sup>2</sup> In this regard, we note the recent recommendations made by the Committee on Civil Justice Reform (the "CJRC") to the Arizona Judicial Council, one component of which is specifically intended to protect the rights of third parties subject to burdensome subpoenas like the Subpoena at issue here. *See THE COMMITTEE ON CIVIL JUSTICE REFORM'S REPORT TO THE ARIZONA JUDICIAL COUNCIL*, at 16-17, *linked via* <https://goo.gl/yQlquz>. The Arizona Judicial Council voted unanimously in October 2016 to support all of the CJRC's recommendations and a rules petition to implement the recommendations will be submitted to the Arizona Supreme Court in 2017.

## **2. THE SUBPOENA SEEKS CONFIDENTIAL AND PROPRIETARY INFORMATION.**

**Second**, to the extent that the Subpoena seeks information regarding SolarCity's training programs, strategies, costs, generation information, and sales projections [e.g., Subpoena ¶¶ 2-5, 7-8, 11-19], SolarCity objects because information of this nature – beyond being irrelevant – is confidential, proprietary, and in many cases, material non-public information. Cf. Ariz. R. Civ. P. 45(e)(2)(B)(i) (allowing a subpoena to be quashed if it "requires disclosing a trade secret or other confidential research, development, or commercial information"); see also *In re Subpoena of DJO, LLC*, 295 F.R.D. 494, 497 (S.D. Cal. 2014) (noting that commercially sensitive information must be "important proprietary information" of which the challenging party has "historically sought to maintain the confidentiality") (citation omitted). SolarCity protects information of this nature from disclosure at every possible juncture because it is integral to its business operations, and its disclosure has the very real potential of causing competitive harm, particularly because APS is itself a SolarCity competitor.

In light of its position as a non-party to the pending proceeding, SolarCity should not be compelled to produce its sensitive financial and business information to its competitor so that APS can engage in a fishing expedition into SolarCity's plans, strategies, and other intimate business details. Where confidential information from a non-party is sought, the burden is on the requesting party to show a "substantial need" for that information, see, e.g., *In re Subpoena of DJO, LLC*, 295 F.R.D. at 498, a showing that APS has not attempted to make (and could not make in any event).

## **3. SOME OF THE INFORMATION THE SUBPOENA SEEKS IS REASONABLY AVAILABLE TO APS THROUGH OTHER MEANS.**

**Finally**, the Subpoena is unreasonable and oppressive because some of the broad categories of information it seeks are available to APS through public sources. *Matter of Special Apr. 1977 Grand Jury*, 581 F.2d 589, 594 (7th Cir. 1978) (noting that "a party who may have the needed document in its own possession, or could easily obtain it from another source, [should not be allowed] to force the subpoenaed party to bear the costs of searching for the document. Placing such a burden on the subpoenaed party when another source is available is deemed unreasonable and oppressive").

Specifically, APS requires that each of its customers entering into an agreement with SolarCity furnish APS with a copy of that agreement. To the extent that APS seeks information regarding the number or details of SolarCity agreements with APS customers [*id.* ¶ 6], information contained within those agreements is therefore already within APS's possession (or can be ascertained from that information). Requiring SolarCity to needlessly reproduce these agreements, and expend resources to glean information from those documents when APS is fully capable of doing so itself, is both unreasonable and oppressive, particularly because SolarCity is a non-party. In addition, the "states in which [SolarCity] operates" [*id.* ¶ 10] is plainly a matter of public record available, among places, on SolarCity's website.

As to APS's requests for SolarCity's company-specific cost information, SolarCity primarily objects to these questions because the answers are highly-sensitive, confidential, competitive, proprietary, and/or trade secret. SolarCity also objects because there is public information available to APS related to this point of inquiry that does not pose an acute threat to a specific solar company by seeking to divulge its highly valued and protected information. To

the extent that APS wishes to present data related to the economics effects of its rate case application proposals on the solar industry, various publications and analysts already publish average installation costs and panel pricing information such that there is no reason to reach into the proprietary information of one company when generally available, and non-trade secret, information exists. For example, see <https://emp.lbl.gov/publications/tracking-sun-ix-installed-price>.

**C. SPECIFIC OBJECTIONS AND RESPONSES TO THE SUBPOENA.**

In addition to the general objections outlined above, SolarCity asserts the following specific objections and responses to the items in the Subpoena:

- **Request No. 1:** This request seeks information that is available publicly on SolarCity's website. Subject to and without waiving any of the General Objections stated above, SolarCity directs APS to the following websites:
  - <http://blog.solarcity.com/steal-our-contracts/>
  - <http://www.solarcity.com/residential/solar-energy-faqs/buy-or-lease-solar>
  - <https://www.solarcity.com/sites/default/files/solarcity-contract-resi-lease-example.pdf>
- **Request No. 2:** See response to Request No. 1.
- **Request No. 3:** In addition to the General Objections stated above, SolarCity objects to this request because it seeks confidential, proprietary, and material non-public information. APS has not made the requisite showing of "substantial need" for information of this nature in this rate case, nor will it ever be able to do so given that the information sought in this request is completely irrelevant to the Commission's task of setting just and reasonable rates for APS customers in Arizona.
- **Request No. 4:** See response to Request No. 3.
- **Request No. 5:** See response to Request No. 3.
- **Request No. 6:** As set forth in the General Objections stated above, APS already has in its possession information regarding the "total number of residential homes that currently host a rooftop solar system sold, leased or subject to a PPA by SolarCity in APS's service territory." Specifically, APS already has in its possession copies of interconnections agreements. Further, subject to and without waiving any of the General Objections stated above, SolarCity directs APS to <http://arizonagoessolar.org/UtilityPrograms/ArizonaPublicService.aspx>, where the information sought in this request is publicly available. It is worth noting that APS itself provides information to and maintains the data contained on [arizonagoessolar.org](http://arizonagoessolar.org), and therefore, APS arguably has the data it is requesting. Finally, it would be overly burdensome to require SolarCity, a third party, to research, compile, and aggregate this data from a public source to which APS has access.
- **Request No. 7:** See response to Request No. 3.

- **Request No. 8:** See response to Request No. 3.
- **Request No. 9:** As set forth in the General Objections stated above, APS already has in its possession information sought in this request and, further, the information sought is available to APS through publicly available sources. Subject to and without waiving the General Objections stated above, SolarCity directs APS to the website [arizonagoessolar.org](http://arizonagoessolar.org), which provides install information by each utility in Arizona. Further, it would be overly burdensome to require SolarCity, a third party, to research, compile, and aggregate this data.
- **Request No. 10:** This request seeks information that is available publicly on SolarCity's website. Subject to and without waiving any of the General Objections stated above, SolarCity directs APS to the following website:
  - <http://www.solarcity.com/company>
- **Request No. 11:** See response to Request No. 3.
- **Request No. 12:** See response to Request No. 3.
- **Request No. 13:** See response to Request No. 3.
- **Request No. 14:** See response to Request No. 3. In addition, SolarCity objects to this request because it seeks irrelevant information that would violate the privacy of its customers in SRP's service area. Subject to and without waiving any of the General Objections, to the extent APS is seeking residential installation data by utility, SolarCity directs APS to the website [arizonagoessolar.org](http://arizonagoessolar.org), which includes residential installation data for SRP in a format that does not violate the above-stated privacy concerns. Finally, it would be overly burdensome to require SolarCity, a third party, to research, compile, and aggregate this data.
- **Request No. 15:** See response to Request No. 14.
- **Request No. 16:** See response to Request No. 14.
- **Request No. 17:** Subject to and without waiving the General Objections stated above, APS's request for data regarding the "Avoided Utility Cost per kWh" is available in the public testimony provided in the SRP pricing process and the TEP, and previous APS rate proceedings to which APS has access. With respect to APS's request for data regarding "total projected savings," see response to Request No. 3.
- **Request No. 18:** As set forth in the General Objections stated above, the information sought in this request is irrelevant to the Commission's task of setting just and reasonable rates for APS customers in Arizona. In addition, the request is unreasonable and overly burdensome because it requests information from a utility provider located outside of Arizona, which has no bearing whatsoever on the Commission's valuation of APS's property and setting of its reasonable rate of return. Further, it would be overly burdensome to require SolarCity, a third party, to research, compile, and aggregate this data.



- **Request No. 19:** See response to Request No. 18.
- **Request No. 20:** Subject to and without waiving the General Objections stated above, SolarCity has no information responsive to this request.
- **Request No. 21:** As set forth in the General Objections stated above, the information sought in this request is completely irrelevant to the Commission's task of setting just and reasonable rates for APS customers in Arizona. It has no bearing whatsoever on the Commission's valuation of APS's property and setting of its reasonable rate of return.
- **Request No. 22:** In addition to the General Objections stated above, this request is ambiguous, overbroad, and unduly burdensome. Initially, its request for "any and all documentation . . . regarding the cost of materials for rooftop system" – as best SolarCity can understand it – is aimed at the solar industry in its entirety, and is objectionable on that basis alone. Beyond that, and in the specific context of SolarCity, that same request arguably has thousands (if not tens of thousands) of responsive documents as each receipt, purchase order, or other document in SolarCity's possession regarding the "cost of materials for rooftop solar systems" would be responsive. It would be overly burdensome to require SolarCity, a third party, to research, compile, aggregate and produce these documents.
- **Request No. 23:** As set forth in the General Objections stated above, the information sought in this request is completely irrelevant to the Commission's task of setting just and reasonable rates for APS customers in Arizona. It has no bearing whatsoever on the Commission's valuation of APS's property and setting of its reasonable rate of return.

### Conclusion

For the reasons set forth herein, SolarCity objects to the Subpoena in its entirety. If we are unable to resolve these issues amicably, SolarCity will have no other choice than to involve the Commission by filing a motion to quash. Please contact me at your earliest convenience to discuss these objections, and whether we can agree on a path forward.

Sincerely,



Roopali H. Desai

RHD:slm

# EXHIBIT 3

ENERGY FREEDOM COALITION OF AMERICA'S  
FOURTH SET OF DATA REQUESTS TO  
ARIZONA PUBLIC SERVICE COMPANY REGARDING  
THE APPLICATION TO APPROVE RATE SCHEDULES DESIGNED TO  
DEVELOP A JUST AND REASONABLE RATE OF RETURN  
DOCKET NO. E-01345A-16-0036  
AND  
DOCKET NO. E-01345A-16-0123  
OCTOBER 7, 2016

EFCA 4.4: Is APS seeking recovery in base rates or otherwise of any membership dues, contributions, or payments made to or on behalf of the Arizona Investment Council ("AIC") as part of its rate case application? If yes, please indicate the amount of the membership dues, contributions, or other payments being sought and where that request is identified in the rate case application on file with the Commission.

This is an ongoing request to be supplemented with any additional data requests and responses.

Response: The total expense for the Arizona Investment Council included in the Cost of Service Test Year was \$86,662. This amount was recorded to O&M and is included in that line in the COSS.